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23 December 1947

OGC HAS REVIEWED.

MEMORANDUM FOR THE ADBO

Subject: Payment of Travel Expenses from Unvouchered Funds

1. You requested the undersigned to examine the regulations and decisions concerning "travel status" and the payment of per diem. In considering allowable travel expenses to be paid by CIA for employees assigned to OSO and employed on unvouchered funds, there is for consideration the following:

(a) Special Funds Regulation No. 1, Section 2.3(a), provides as follows:

"Travel expenses will be paid from unvouchered funds in the amount permitted by law and the Standardized Government Travel Regulations. No reimbursement will be made for items of expense not allowable under such regulations. . . ."

These regulations, of course, were issued by the Director of CIG and adopted for use by CIA.

(b) By memorandum dated 1 January 1947, the Director of CIG delegated authority to the Assistant Director for Special Operations, or the Executive Officer for Special Operations, to approve:

"within the limits of unvouchered funds allotted to the Office of Special Operations by the Projects Review Committee and in accordance with existing laws and regulations. . . ."

"1. The transfer of civilian employees from one official station to another, and the payment or reimbursement of all expenses incident thereto, . . ."

"5. Travel by civilian employees incident to change of their official station."

(c) Special Funds Regulation No. 1 provides for the appointment of certifying officers who must examine, approve, and certify all vouchers claiming reimbursement from unvouchered funds prior to payment. The certifying officer is authorized by the regulations to refer to the Chief, Special Funds Division, or other appropriate officer, any question concerning the use of unvouchered funds.

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(d) Agent-Cashiers are provided for in Special Funds Regulation No. 1, and in addition to other duties, are authorized:

"Notwithstanding the presence of necessary approvals and certifications, bring to the attention of the Chief, Special Funds Section, or other appropriate officer, any facts which lead the agent-cashier to believe that the expenditure presented thereby is improper or illegal;"

(e) In Special Funds Regulation No. 1, the General Counsel is charged with certain duties concerning the administration of unvouchered funds:

"(a) Upon the request of the Director, CIG, or other appropriate official, to render his opinion as to the legality of any payment or proposed payment;

"(b) Report to the Director, CIG, any facts tending to show the illegal or improper use of unvouchered funds;"

(f) The Subsistence Expense Act of 1926, as amended, provides in Section 3 as follows:

"Civilian officers and employees of the departments and establishments while traveling on official business and away from their designated posts of duty shall be allowed in lieu of their actual expenses for subsistence and all fees or tips to porters and stewards, a per diem allowance to be prescribed by the heads of the departments and establishments concerned at a rate not to exceed \$6.00 within the limits of the continental United States and not to exceed an average of \$7.00 beyond the limits of the continental United States."

(g) Paragraph 46 of the Standardized Government Travel Regulations, provides as follows:

"Under no circumstances will per diem in lieu of subsistence be allowed an employee at his official station."

2. It appears clear from the above that the Director has authorized unvouchered funds to be expended for travel expenses only in accordance with the Standardized Government Travel Regulations. Also, the delegation of authority to you, and to your Executive Officer, provides for authority

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to direct travel and authorize the payment of travel expenses in accordance with existing laws and regulations. Further, certifying officers, as well as agent-cashiers, are required to ascertain that vouchers certified and payments made on such vouchers are in accordance with the Special Funds Regulations. The certifying officer is bonded and, in addition, may be held personally liable where he has certified a voucher as being in accordance with regulations and, in fact, the voucher is not. In the event of questions, they are authorized by the Director, in the Regulations, to refer questions to the Chief, Special Funds Division, or other appropriate officer. The General Counsel is authorized by the Director in the Special Funds Regulations, to render his opinion as to the legality of any payment or proposed payment. Therefore, when a voucher is presented for certification to the certifying officer which appears questionable in any way, the certifying officer is authorized to request an opinion from the General Counsel concerning the legality of the proposed payment.

3. In the case which we discussed, the employee had been permanently employed in Washington from 17 February 1947. On 27 July 1947, she was transferred from her position as P-2, salary \$3,397.20, to CAP-6, salary \$3,021.00, with the intent of shipping her to an overseas station. Her transportation was scheduled, and she was to leave 27 September 1947. Prior to that date, her transportation was canceled, since her designation from the Department of State had not been secured. In the meantime, she had shipped some of her clothing to the overseas station. However, she was able to reclaim some of the baggage and clothing which had been shipped and states that she incurred expenses amounting to \$58.21 in trips to New Jersey for this purpose. The employee also states that she had to spend the approximate total of \$200.00 for additional clothing to replace that which had been shipped to the overseas station. A further fact is that the employee had given notice to vacate her apartment. However, it is understood that she was able to stay in the apartment in which she had been residing and is presently living in that apartment.

4. The question arises whether or not the employee entered into a travel status which would entitle her to a per diem allowance in lieu of subsistence if authorized by the appropriate official. As noted above, the Subsistence Expense Act of 1926 provides that employees of the Government be allowed a per diem allowance in lieu of actual

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expenses for subsistence while traveling on official business and away from the employee's designated post of duty. This question was considered in 9 Comp. Gen. 233, 6 December 1929. In that case, the employee was employed in Washington, and on 26 September 1929, she was transferred to another Government agency, and her official headquarters was designated as Minneapolis, Minnesota, for the new position. Also, she was directed to remain in Washington for a time and did remain there until 13 October 1929. She submitted a voucher covering per diem for the period 27 September to 13 October 1929. It was held that during the period for which the employee claimed per diem, she was not traveling on official business and, apparently, lived just as she had been living while employed by the Government agency up to the time of her transfer. Consequently, the transfer did not operate to place her in a travel status so as to entitle her to subsistence or per diem in lieu thereof. In 16 Comp. Gen. 824, 17 January 1936, it was held that when an employee is appointed and enters upon duty at the place of appointment, a travel status entitling him to reimbursement of travel expenses or per diem in lieu of subsistence would not begin until he actually begins travel from that point.

5. The holding in 20 Comp. Gen. 520, 27 May 1947, is illuminating. In that case, the employee had been employed in Washington until 20 June 1940. On that date, he was appointed in another Government agency and required to receive training and instruction in Washington for his field duties. On 29 June 1940, the training having been completed, he was directed to report to his field station at Atlanta, Georgia. The employee submitted a per diem voucher covering the period 21 June to 29 June 1940 while under instruction in Washington. It was held that since the employee was residing in Washington at the time of appointment, the fact that his departure was delayed a few days did not put him to any additional expense for subsistence, and, in any event, the decisions were consistent in holding that under such circumstances there is no authority for payment of per diem. It was stated:

"Accordingly, there is no authority under which you could be paid per diem at your place of residence before entering upon a travel status."

6. There are numerous decisions which state that per diem in lieu of subsistence is payable only when in a travel status away from official headquarters (21 Comp. Gen. 330, 31 July 1941). It has been held that any reasonable administrative designation of the first duty station is not ordinarily questioned, and when the employee is transferred bona fide to the final duty station, travel expenses are payable. Conversely, if the place of appointment is determined to be a temporary duty station, subsistence

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administratively may be authorized for the temporary duty period up to the time of departure, unless, of course, the temporary duty required of the new employee is in the city of his residence (22 Comp. Gen. 859, 5 March 1943). "The Subsistence Expense Act does not contemplate the payment of a subsistence allowance for all employees at all times, the payment of which would augment their salaries in contravention of Sections 1764 and 1765, Revised Statutes." (23 Comp. Gen. 164, 3 September 1943).

7. The decision in 25 Comp. Gen. 461, 21 December 1945, illustrates the strictness with which the Comptroller General adheres to the provisions of law and regulations prohibiting the payment of per diem while at the official post of the employee. The facts were that the employee was issued a transfer order from Seattle, Washington to Honolulu, but in the travel order was required to perform temporary duty at Santa Monica, California before proceeding to Honolulu. Before the transfer was consummated, the employee was directed to return from his temporary duty station at Santa Monica to Seattle. In the meantime, the employee had given up his home and had his furniture prepared for shipment to Honolulu. The request for per diem was submitted on behalf of the employee for the period of time spent by him in Seattle after returning from his temporary duty in Santa Monica. It was held:

"In the circumstances, the order directing his return to Seattle may be construed only as a suspension or cancellation of his previous order for transfer of headquarters, in which event Seattle continued to be his official headquarters, and no per diem in lieu of subsistence may be paid to him while on duty at Seattle."

8. The undersigned conducted a careful search of the decisions of the Comptroller General concerning the payment of per diem to persons while in a travel status and what constitutes a travel status. The decisions given above are typical of the Opinions of the Comptroller General on the subject. Advice was requested informally from the Department of State concerning the type of problem involved. We were advised that they had been unable to authorize a per diem for employees in this type of situation. In view of the above, if the certifying officer or agent-cashier involved in the payment of a voucher of this nature requested an opinion, we could say only that since the employee was at her official station and cannot be considered in a travel status, a per diem is not authorized to be paid to her as long as she remains in Washington.

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9. The specific regulations of the Director regarding the use of unvouchered funds, together with his specific directions to this office, require the opinion furnished herein. Where the circumstances are such that an employee is put to additional expense by the organization's orders occasioned by security or operational necessity, there would appear to be an appropriate claim against the organization. Where such claims are beyond the scope of the Special Funds Regulations, the claim necessarily requires the Director's approval before payment. If deemed desirable, a proposed regulation to handle such cases could be prepared, and with the Director's approval could be administered wholly within OSO. This office would be glad to assist in the preparation of the necessary regulations to effect the above for presentation to the Director, CIA.

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Assistant General Counsel

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